In the High Court of Punjab and Haryana at Chandigarh.

F.A.O.No.5311 of 2004.

Date of decision:22.12.2006.

Avtar Singh.

...Appellant.

Versus

Gursewak Singh and others.

...Respondents.

...

Coram: Hon'ble Mr. Justice S. N. Aggarwal.

...

Present: Mr.P.S.Dhaliwal Advocate for the appellant.

Mr.Sanjiv Bansal, Mr.Deepak Kaushal and Mr.Sandeep Bansal,Advocates for the respondents.

...

Judgment.

S. N. Aggarwal, J.

Elections for the office of Sarpanch of village Ralla, Tehsil and District Mansa had taken place on 29.6.2003. Avtar Singh, appellant and Gursewak Singh, respondent No.1 had contested the elections. There were four polling booths in the village which were numbered as 41, 42, 43 and 44. After the votes were counted,the following result emerged:-

Polling booths.	Votes Polled by	Votes polled by	Rejected votes	Total

	Gursewak Singh	Avtar Singh		
41	708	392	47	1147
42	463	474	29	966
43	397	486	19	902
44	436	548	52	1036
Grand total	2004	1900	147	4051

Out of 4063 votes polled,12 were found missing and the details of 4051 have been given above. Since Gursewak Singh,respondent No.1 had secured more votes,therefore, he was declared elected as Sarpanch of Gram Panchayat of village Ralla.

Avtar Singh appellant filed the Election Petition. It was alleged by him that Gursewak Singh had secured less votes than the votes polled in his favour but respondent No.1 (Gursewak Singh) conspired with respondent Nos.2 to 5 (Presiding Officers of the four polling booths) and the result was declared after committing large scale bunglings in the counting process. Invalid votes were counted as valid votes in favour of Gursewak Singh,respondent No.1 especially in polling booth No.41. It was further alleged that the Presiding Officer of Booth number 41 has wrongly counted a bundle of 100 votes which were double stamped in favour of respondent Gursewak Singh. Similarly, this Presiding Officer of polling Booth No.41 had included

some double stamped votes in each bundle of votes and counted the same in favour of respondent No.1 totalling to 62. Even 52 votes polled in favour of the appellant were counted in favour of respondent No.1. It was further alleged that respondent No.1 had, in fact, secured 1790 votes which were wrongly counted as 2004. The appellant had raised these objections but he was not heard and he and his polling agents ultimately left the counting hall without signing the result sheet.

This petition was contested by Gursewak Singh, respondent No.1 and the by all the Presiding Officers of all the four polling booths.

Issues were framed.

The parties led the evidence.

In support of his allegation, Avtar Singh appellant had appeared as PW-1 and Niranjan Singh was examined as PW-2. On the other hand, Gursewak Singh respondent appeared as RW-1. Rajinder Singh was examined as RW-2 and Kulwant Singh was examined as RW-3.

The Presiding Officer, Election Tribunal, Mansa after perusing the pleadings of the parties, analysing the evidence and hearing the submissions directed recount of votes vide order dated 4.6.2004. Recount of votes was to take place on 18.6.2004 at 10 AM.

This order was challenged by Gursewak Singh,respondent No.1 by filing Civil Writ Petition No.9269 of 2004. This petition was,

however, dismissed by the Hon'ble Division Bench of this Court vide order dated 2.9.2004. The parties appeared before the Presiding Officer, Election Tribunal, Mansa on 5.10.2004. The learned Election Tribunal directed that the recount of votes would take place on 12.10.2004 before the Additional Deputy Commissioner (General) who was appointed as a Counting Officer.

Accordingly, recount of votes had taken place on 12.10.2004 before the Additional Deputy Commissioner,Mansa and the following result emerged:-

Polling Booth.	Votes polled by Gursewak Singh	Votes polled by Avtar Singh	Rejected Votes.	Total
41	354	231	59+301	945
42	467	474	25	966
43	397	685	20	1102
44	423	578	22	1023
Grand total	1641	1968	126+301	4036

Originally, 12 votes were missing but at the time of recount,15 more votes were found missing. Accordingly, the Additional Deputy Commissioner Mansa submitted counting report dated 12.10.2004 to the Election Tribunal. This report was duly signed by the parties as well.

On this basis of this counting report, the learned Election

Tribunal reached the conclusion that 301 votes were doubly stamped for the advantage of Avtar Singh appellant after the counting of votes had taken place on 29.6.2003. The ballot papers have been tampered with in order to secure illegal gain. Accordingly, it was held "that Avtar Singh appellant cannot be permitted to take advantage of his atrocious attempt to derail the democratic process by interfering with the verdict of the people in this blatant manner." Accordingly, the Election Petition was dismissed vide order dated 12.10.2004.

The appellant filed an appeal against this judgment. It was accepted by this Court vide order dated 4.2.2005 and Avtar Singh appellant was declared elected as Sarpanch of Gram Panchayat of village Ralla. Gursewak Singh,respondent No.1 filed S.L.P(C) 4237 of 2005 (Civil Appeal No.1912 of 2006) which was accepted by the Hon'ble Supreme Court vide judgment dated 5.4.2006. The Hon'ble Supreme Court was pleased to observe that the High Court should go into the correctness of the findings recorded by the Tribunal keeping in view the pleadings made by the appellant in the election petition and remitted the matter to this Court for consideration of the matter afresh.

That is how the matter is once again before this Court.

In the Election Petition filed by Avtar Singh appellant, it was specifically pleaded that respondent No.1 (Gursewak Singh) had conspired with respondent Nos.2 to 5 (Presiding Officers of four separate polling booths) and committed large scale bunglings in the

counting process. Although these allegations were made generally for all the polling booths but much more emphasis was laid on polling booth No.41. These allegations have been narrated in detail in para No.3 above of this judgment. These allegations obviously constitute a corrupt practice of the worst type,if mischief is played in counting the votes and if these votes are counted not as polled,not as per the procedure laid down but with ulterior motive to help a candidate at the cost of the other.

So far evidence is concerned, no discrepancy of great dimension was noticed so far as polling booth Nos.42 and 43 are concerned. But in polling booth No.44, there is a great margin of votes when originally counted on 29.6.2003 and when recounted on 12.10.2004. In the counting of 29.6.2003, Gursewak Singh was given 436 votes while in fact only 423 votes were found in his favour in the recounting held on 12.10.2004. Similarly 548 votes were counted in favour of Avtar Singh appellant in the counting of 29.6.2003 while at the time of recounting held on 12.10.2004, he was found having secured 578 votes.30 votes polled in favour of the appellant were considered as invalid votes while,13 votes were illegally counted in the kitty of Gursewak Singh, respondent. Thus, the difference of 43 votes was noticed at the time of recounting. Originally there was shown a margin of 112 votes in polling booth No.44 but at the time of recounting, the difference between the votes secured by the two

candidates was found to be of 155 votes. This omission in the original counting cannot be innocent. Obviously, it was intentional and motivated and the allegation of Avtar Singh appellant was found to be true.

So far as polling booth No.41 is concerned, the large scale bungling in counting is writ large. In the counting of 29.6.2003, Gursewak Singh got 708 votes while Avtar Singh appellant got 392 votes and 47 votes were considered as rejected votes .But the picture that emerged at the time of recounting held on 12.10.2004 is startling. According to it Gursewak Singh got 354 votes and Avtar Singh got 231 votes. If 301 votes which were having double stamps are counted in the kitty of Gursewak Singh even then he got 655 votes i.e. 53 votes less than counted in his favour on 29.6.2003. Similarly if 200 votes of Avtar Singh which were found in the bundle of booth No.43 though pertained to booth No.41, are counted then the number of votes secured by Avtar Singh goes upto 431 while originally only 392 votes were counted in his favour. In other words, Gursewak Singh was given 53 votes more than what he actually secured while Avtar Singh's votes were counted 39 votes less than what were actually polled in his favour thereby increasing the distance between the two by 92 votes illegally. This clearly revealed large scale bungling in the counting held on 29.6.2003. Obviously, this bungling in the counting process was motivated. It appears that the artificial gap of 43 votes in polling booth

number 44 and of 92 votes in polling booth number 41 created in favour of Gursewak Singh, cannot be unintentional on the part of Presiding Officers of these polling booths nor it can be innocent mistake. It brings in the involvement of the beneficiary and his link with the Presiding Officers of polling booth Nos.41 and 44.

It was also observed by the Election Tribunal towards the end of para No.23 of the impugned order dated 12.10.2004 as under:-

> "The role of the ARO/Presiding Officer and the Assistant Presiding Officer of booth 41, and Presiding Officer of booth 44 has also not been satisfactory. In booth 41, there is a cumulative addition of 39 votes further in favour of petitioner, whereas in booth 44, the booth-wise tally of the petitioner has increased from 548 to 578 i.e. there is difference of 30 in favour of the petitioner. Such significant differences ought not to take place in routine, keeping in view the importance of even single votes in closely fought elections."

It is, therefore, clear that at-least the Presiding Officers of polling booth No.41 and polling booth No.44 had mis-conducted themselves in the counting process and as alleged by the appellant in the Election Petition, there was a large scale bungling in the counting process and obviously the beneficiary respondent cannot be considered to be innocent.

In the Election Petition, the appellant had levelled allegations of large scale bungling in the counting process. Therefore, it was a sufficient ground under Section 89 of the Punjab State Election Commission Act,1994 (in short PSEC Act,1994) to challenge the election. It reads as under:-

"89. Grounds for declaring election to be void.--(1) Subject to the provisions of sub-section (2),if the Election Tribunal is of the opinion,-

(a) .. ..

(b) .. ..

(c) .. ..

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected,--

(i) xx xx xx xx

(ii) xx xx xx xx

(iii) by the improper reception, refusal or rejection of any vote or the receipt of any vote which is void; or

(iv) xx xx xx xx"

The counting of invalid votes illegally for Gursewak Singh respondent (returned candidate) and the illegal rejection of valid votes of Avtar Singh by the Presiding Officer of polling booth Nos.41 and 44 becomes the legal and valid ground under Section 89(1)(d) of the PSEC Act, 1994 to challenge the election of Gursewak Singh,

respondent. The allegations levelled by the appellant in the Election Petition have been proved to a great extent in the recounting.

Therefore, the Election Tribunal was not justified in observing in para No.21 of the impugned order that no corrupt practice was alleged against the returned candidate or that no charges have been proved against the returned candidate. The only allegation made by the appellant was that returned candidate was hand-in-glove with the Presiding Officers of polling booths as a result of which large scale bunglings had taken place in the counting process. Improper reception of invalid votes as valid votes for a candidate and improper rejection of valid votes of the other candidate as invalid votes is a very serious allegation which defeats the whole democratic election process. Whatever name may be given to it, it constitutes the worst crime in the election process. No Presiding Officer or the Returning Officer would commit such big lapses without being motivated by the party being benefitted. Therefore, it cannot be held that no charges were proved against Gursewak Singh when such large scale bunglings were proved in the counting process which helped Gursewak Singh,respondent. The recounting has clearly proved these allegations levelled by the appellant. Therefore, the allegations were made within the scope of the PSEC Act,1994 which have been proved by the appellant.

But, the picture which was noticed at the time of recounting is still stunning which does not spare the appellant as well. At the time

of recounting, held on 12.10.2004,it was found that 301 votes carried double stamping. These votes were polled in favour of Gursewak Singh, respondent. Double stamping had taken with a view to defeat him. It was observed by the Election Tribunal (para No.18) as under:-

> "This inordinate increase in the number of rejected votes was brought to the attention of the undersigned by the ADC-cum-Counting Officer when detected during recounting, and the undersigned, exercising supervision of the recounting process, as mandated by the Punjab State Election Commission Act, 1994, and various court decisions, examined these 301 ballot papers, and after due examination it was clearly seen that not only the colour and density of the ink used, but also the shape of the balloting stamp, bore no resemblance to each other, the candidates being only 2 in number. From this, it has been concluded that one of the stamps,whereby the vote in favour of Sh. Gursewak Singh, respondent 1, has been sought to be rejected, has in fact been administered at a different place and time than the date of the actual polling on 29.6.2003. It can also be concluded that the same has been done by interested persons after the conclusion of poll and after the declaration of the result,as the same has not been incorporated in the report of the ARO/Presiding Officer.

When this matter came up before the Counting Officer during recounting process on 12.10.2004, he informed this Tribunal,whereupon the disputed ballot papers were closely inspected and the statement of Sh.Tejpal Rishi (ARO/Presiding Officer, Booth 41, presently Lecturer, GSSS (Girls), Phaphre Bhaike, Mansa) and Sh.Kulbir Singh (Assistant Presiding Officer, Booth 41, presently Maths Master, GSSS Hola Kalan, Mansa) were recorded."

It was further observed by the Election Tribunal in para No.21of the impugned order as under:-

"It is thus quite clear that there has been blatant tampering of the election material, namely the ballot papers pertaining to the election. Not only was the 'mess' noted by the Hon'ble High Court, though at that time it worked to the advantage of the petitioner,as the consequence of this observation was that the appeal filed by the respondent 1 against the order of recounting passed by this Tribunal on 4.6.2004, was dismissed. Now again the actual and factual 'mess' has been noted by this Tribunal. Allegation, supported by affidavit, of tampering, directly aimed at the petitioner,the then BDPO Bhikhi, the Chowkidar of BDPO office at Bhikhi and Shri Raghbir Singh who was Returning Officer, was made by the respondent 1 on 16.9.2004 in

which it was prayed that the election record be sent to experts at chemical laboratory. Reply denying these allegations was received and placed on file."

It was further observed by the Tribunal in para No.21 as under:-

"This Tribunal has not come across any such blatant case where tampering of polled votes has taken place after the declaration of results, in order to create an unassailable position in case of recounting of votes. It is a measure of the level of degree of lawlessness and desperation which a defeated candidate can go to get himself declared selected."

In order to examine if the double stamping had taken place by folding of the ballot paper or otherwise,the boxes were called by this Court on 21.12.2006 in the chamber. There were two iron boxes (trunks). One trunk contained the polling material of polling booth Nos.41 and 44. The other contained polling material for polling booth Nos.42 and 43. Both these trunks were having two locks each which were locked. Each lock was wrapped in a piece of cloth. It was duly sealed. The seals were intact. Only the trunk containing polling material of polling booth Nos.41 and 44 was opened. Two cloth parcels were found in the said trunk. Both were tied and sealed. One contained polling material of polling booth No.44. The other contained the polling material of polling booth of No.41. Only the cloth parcel of

polling booth No.41 was opened. In that cloth parcel, one paper envelope (with cloth inside) was again found sealed. Its seal was broken. 301 ballot papers having double stamps were found in bundles of 50 votes each and one parcel contained 51 votes.

The perusal of these bundles clearly revealed that these ballot papers were carrying two stamps i.e. one each against the name of the appellant and the name of the respondent No.1. The official seal appeared to be of thicker shape while the other seal was of thin lines Some of the ballot papers contained three stamp markings. Some of these ballot papers were having ink smudging and two/three were found to have been thumb marked. It was clearly made out that some fake stamp has been used to double mark the ballot paper with an intention to make the vote invalid. Therefore, the observations were correctly made by the Election Tribunal that an attempt has been made to derail the election process.

After the perusal of the double marked votes,these were separately parcelled in a paper envelope and the said parcel was sealed. It was kept in another paper parcel. That paper parcel was again sealed and was put in the cloth parcel. The cloth parcel was again sealed which was put in the trunk. The trunk was again locked by two locks. Each lock was wrapped in a piece of cloth and was sealed and it was sent to the concerned branch.

Now, the question is who has done double stamping of the

ballot papers and at which stage and at which place. Obviously, double stamping was not possible on 29.6.2003 because the stamp which has been used for double stamping the ballot paper is of different size. If somebody was to do double marking on 29.6.2003 itself, he could do it so with the same seal which was provided to him for polling his ballot paper. Since the line mark of 2nd stamp was thinner in size than the lining of the official seal, therefore, obviously, some fake stamp was got prepared later on which was affixed on the ballot papers and,therefore, this took place after 29.6.2003.

These conclusions are supported by the observations made by this Court while passing order dated 25.8.2004 in Civil Writ Petition No.9269 of 2004 by which the boxes containing the ballot papers were ordered to be opened. It was observed as under:-

> " We have heard learned counsel for the parties at some length.
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> During the course of hearing it appeared to us that in the interest of justice we would direct the box containing the votes to be opened. Therefore, we directed seals of the box to be removed in presence of counsel for the parties and the Reader of the Court. The seals were removed and box opened by the officials in their presence. It has been brought to our notice that the bags containing the votes, particularly, in relation to booth No.41, which envelope

was opened, clearly show that they are not being maintained in a proper way. There are no separate envelopes to indicate rejected votes, wrongly counted votes and the votes in favour of each of the candidate to the election. At this stage, we would not make any further observations to avoid any prejudice to the rights and contentions of either party to these proceedings.

Arguments have been concluded. We direct that the envelop as well as the box be sealed in the presence of counsel for the parties and the seal should be clearly marked so as to establish its identity at a subsequent stage before the competent forum.

Judgment reserved."

Thereafter boxes containing the polling material were produced before the Counting Officer on 12.10.2004. On that date also, the parties had verified that the seals on the iron boxes were intact. After the boxes were opened,it was found that 301 votes were carrying double stamps. The statement of the Presiding Officer of polling booth number 41 namely Raj Pal Rishi, was recorded on the same day by the Tribunal who deposed that double stamping was not there on 29.6.2003.

It was also observed by the Counting Officer that three bundles of ballot papers of polling booth No.41 were fund to be intact

while some votes were lying loose and 301 ballot papers which were found having double stamps were in loose form and not in bundles. Similarly, 200 of ballot papers of booth No.41 were found in the packet of polling material of booth No.43. This picture clearly revealed that some hanky-panky was done after the counting process was over on 29.6.2003 and before these parcels of ballot papers were produced in the Hon'ble High Court on 25.8.2004.

Now, the question is as to where the polling material was deposited after 29.6.2003. Under Rule 38 of the Punjab Panchayat Election Rules, 1994,(in short PPE Rules), the polling material was required to be deposited with the Electoral Office immediately after the election process was over. Under Rule 39 of the PPE Rules, the election papers are to be kept by the District Election Officer in his custody until the expiry of one year from the date of election or till the conclusion of an election petition.

The Election Tribunal has observed that polling material was deposited with the BDPO and even the respondent has filed affidavit levelling allegations against Baljinder Singh,the then BDPO Bhikhi, Raghbir Singh Returning Officer and Darshan Singh Chowkidar of BDPO office Bhikhi.

Obviously, it means,therefore, that the mischief had taken place when the material was lying in the office of BDPO Bhikhi.If the provisions contained in these relevant Rules had been complied with,

then possibly the mischief could have been avoided.

No doubt, the double stamping has been done on the votes which were polled in favour of Gursewak Singh,respondent No.1 and it appears that it has been done to help the appellant but that does not lead to the conclusion that double stamping has been done by Avtar Singh appellant. The material was lying beyond his reach i.e. in the office of B.D &P.O. It would be,only after holding an enquiry, that responsibility can be fixed on the person who has tampered with the ballot papers but obviously this attempt has been made by the officer/official incharge of the polling material to favour the appellant.

The submission of learned counsel for the appellant was that even if these 301 votes are counted in favour of Gursewak Singh,respondent No.1, still he (respondent) would be the looser and,therefore, the appellant should be declared a winner candidate.

This submission has been considered. It has no merit.

In the present case, the question is not as who has secured more votes. The question is that ballot papers have been tampered with and an effort has been made to get the decision of the Election Petition in favour of the appellant by taking into consideration the votes tampered with by one or the other. The appellant cannot take any benefit on the plea that he has secured more votes because of this blatant attempt made by the officials in his favour, may be in collusion with him to invalidate the valid votes of the returned candidate.

Obviously the appellant is the beneficiary of this condemnable effort.

The respondent had secured illegal gain at the time of first counting held on 29.6.2003 in collusion with the Presiding Officers especially of polling booth Nos.41 and 44. The appellant exploited the situation thereafter when the polling material was lying with the BD & PO Bhikhi. In these circumstances, this Court has no other option but to hold that the whole election process in this case has been polluted. Therefore, the whole election process is declared to be void.

This petition is accordingly accepted partly and the election of Gursewak Singh is declared void. None of the parties would hold the office of Sarpanchship any more from now till the re-election. The State Election Commission is directed to re-hold the fresh elections of Sarpanch of Gram Panchayat of village Ralla expeditiously preferably within a period of six months. Besides others,the parties would also be entitled to contest the elections.

December 22,2006. (S. N. Aggarwal)
Jaggi Judge